Filed 6/9/17 P. v. Parker CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. JAMEL EUGENE PARKER, Defendant and Appellant.	B269819 (Los Angeles County Super. Ct. No. NA031955)

APPEAL from an order of the Superior Court of Los Angeles County, William C. Ryan, Judge. Affirmed.

Stephen M. Vasil for Defendant and Appellant.

Kathleen A. Kenealy, Acting Attorney General, and Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Susan Sullivan Pithey and Mary Sanchez, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant James Eugene Parker appeals from an order denying his petition to recall his sentence and for resentencing under Proposition 47, The Safe Neighborhoods and Schools Act. (Pen. Code, § 1170.18.)[1] The order is affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant is serving a Three Strikes sentence of 25 years to life for second degree commercial burglary (§ 459, counts 1, 2 & 3) and forgery (§ 470, subd. (a), count 4). The judgment of conviction, which we affirmed in *People v. Parker* (July 15, 1999, B124806) [nonpub. opn.]), was based on his repeated attempts to cash a forged check at Nix Check Cashing. Because the amount of the check, $917.56, exceeded the $400 threshold for grand theft (see former § 487, added by Stats. 1993, ch. 1125, § 5), the burglary convictions constituted a third strike under the law then in effect.

As a result of subsequent voter initiatives—Proposition 36, The Three Strikes Reform Act of 2012 (§ 1170.126)[2] and

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[1] Unless otherwise indicated, all further statutory references are to the Penal Code.

[2] In November 2012, the California electorate approved Proposition 36, which amended the Three Strikes law by limiting the imposition of a 25-year-to-life sentence upon the conviction of a third felony. Under Proposition 36, "a defendant convicted of two prior serious or violent felonies is subject to the 25-year-to-life sentence only if the third felony is *itself* a serious or violent felony. If the third felony is not a serious or violent felony, the defendant will receive a sentence as though the defendant had only one prior serious or violent felony conviction, and is therefore a second strike, rather than a third strike, offender.

Proposition 47, The Safe Neighborhoods and Schools Act (§ 1170.18)—the commitment offenses, if committed today, are no longer punishable as a third strike. Appellant, who sought relief under each initiative, is challenging the denial of his petition for resentencing under Proposition 47. (§ 1170.18, subd. (a).)[3]

Relevant to this appeal, Proposition 47 added a new shoplifting statute. Section 459.5 defines shoplifting as the entry of a commercial establishment during regular business hours with the intent to commit larceny, where the value of the property taken or intended to be taken is under $950. (§ 459.5,

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[Proposition 36] also provides a means whereby prisoners currently serving sentences of 25 years to life for a third felony conviction which was not a serious or violent felony may seek court review of their indeterminate sentences and, under certain circumstances, obtain resentencing as if they had only one prior serious or violent felony conviction. According to the specific language of [Proposition 36], however, a current inmate is not entitled to resentencing if it would pose an unreasonable risk of danger to public safety." (*People v. Superior Court* (*Kaulick*) (2013) 215 Cal.App.4th 1279, 1285–1286, fn. omitted (*Kaulick*).)

[3] "A person who, on November 5, 2014, was serving a sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under the act that added this section ('this act') had this act been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing in accordance with Sections 11350, 11357, or 11377 of the Health and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those sections have been amended or added by this act." (§ 1170.18, subd. (a).)

subd. (a).)[4] Shoplifting is punishable as a misdemeanor unless the defendant has suffered prior disqualifying convictions. (*Ibid.*)

It is undisputed that appellant's burglary offenses, had they been committed after Proposition 47, must be charged as shoplifting under section 459.5 rather than burglary. Subdivision (b) of section 459.5 provides that "[a]ny act of shoplifting as defined in subdivision (a) shall be charged as shoplifting. No person who is charged with shoplifting may also be charged with burglary or theft of the same property."

Even though a petitioner meets the eligibility requirements for resentencing, the court has discretion to deny relief if it finds the petitioner is not suitable for resentencing. The petition may be denied if the petitioner poses an unreasonable risk of danger to public safety. (§ 1170.18, subd. (c).) Under Proposition 47, the term "unreasonable risk of danger to public safety" refers to the risk the petitioner will commit one of the serious or violent felonies described in section 667, subdivision (e)(2)(C)(iv). (§ 1170.18, subd. (c); see *People v. Jefferson* (2016) 1 Cal.App.5th 235, 242.) The disqualifying offenses, often referred to as "super

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[4] "Notwithstanding Section 459, shoplifting is defined as entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours, where the value of the of the property that is taken or intended to be taken does not exceed nine hundred fifty dollars ($950). Any other entry into a commercial establishment with intent to commit larceny is burglary. Shoplifting may be punished as a misdemeanor except that a person with one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290 may be punished pursuant to subdivision (h) of Section 1170." (§ 459.5, subd. (a).)

strikes," consist of enumerated sex crimes for which registration as a sex offender is required (crimes involving sexual violence or victims who are minors), any homicide or attempted homicide, solicitation to commit murder, assault with a machine gun on a peace officer or firefighter, possession of a weapon of mass destruction, and any serious or violent felony punishable by life imprisonment or death. (§ 667, subd. (e)(2)(C)(iv).)

Respondent's Arguments. Respondent argued that appellant poses an unreasonable risk of danger to public safety based on his criminal history, conduct during his present incarceration, current gang membership, insufficient progress toward rehabilitation, and inadequate post-release plans.

Criminal History. In addition to providing documentary evidence of appellant's prior convictions, respondent described appellant's criminal history of more than 30 years: "Beginning at age twelve, in 1982, petitioner began his juvenile criminal career of burglary, selling rock cocaine, stealing cars and theft from the person. He next committed multiple violent assaults and eleven counts of robbery, with a firearm. Numerous victims were held at gun point, their lives threatened and then they were robbed. . . . [¶] As a youth, he also began his documented and multiple decades long Rolling 20's Bloods gang membership[, which he has] never renounced or abandoned and will most assuredly continue if he is released . . . . [As an adult, he] committed two more violent robberies and when released on parole for those robberies, he committed the instant offense. His documented robbery count stands at 13."

Rules Violations. Respondent supplied prison disciplinary records for appellant's current incarceration, including five administrative segregation unit placement notices dating from

March 2002 to February 2010, and seven Rules Violation Reports dating from April 1999 to January 2012. Respondent argued that appellant's "significant, and continual CDC [California Department of Corrections] rules violations . . . reflect petitioner's lifelong disregard for authority and his inability to comport his behavior to the rules of his environment going back decades in society and in the CDC. Given petitioner's Conspiracy to Murder Peace Officers and subsequent SHU [security housing unit] commitment alone, the unreasonable[] risk of danger to the public in Petitioner[']s release is manifest. . . ."

Appellant's prison record contains Rules Violation Reports for:

- Mutual combat with another inmate, in April 1999.
- Manufacturing alcohol, in October 2001.
- Participating in riots, in February 2002, April 2002, and January 2012.
- Threatening staff, in March 2005. The letters supporting this offense are described below. Appellant was found guilty of threatening staff as a lesser offense of the charged offense of threatening to murder a peace officer. (See Cal. Code Regs., tit. 15, § 3005, subd. (a) ["Inmates and parolees shall obey all laws, regulations, and local procedures, and refrain from behavior which might lead to violence or disorder, or otherwise endangers facility, outside community or another person"].)
- Conspiracy to murder peace officers, in May 2005. This charge, which was supported by the letters written in March 2005, is discussed below.

March 2005 Letters. Upon reviewing appellant's written correspondence to third parties, prison authorities found two letters which resulted in the March 2005 violation for threatening staff. The first stated: "It be making me mad how we blacks get treated in hear [sic] and you find some fool's doing non violent protest, I'm not with all that non violent protest played out with Dr. King. Its now time for black's to get busy and give these crackers the only thing they understand and that's violence."

In the second letter, he wrote: "I expected to be off lockdown by now, but the cops are scared to let us off, a cop got killed last month, so I guess these cops got a reality check and realize they could get a quick death certificate if they continue there [sic] racist behavior."

At the disciplinary hearing, appellant explained that his letters were not intended to convey threats: "I was mad at the blacks in the building based on their conduct. I was watching TV and saw that a black was burned in Texas and nothing was done about it. I did not make any threats towards a peace officer. I was just mad and writing a letter."

Conspiracy to Murder Peace Officers. Two months later, the same letters were cited as corroborating evidence with regard to the May 2005 conspiracy to murder peace officers. The conspiracy came to light when authorities received confidential information that appellant and other Black inmates were planning to murder prison guards. According to an unnamed source, conspirators were meeting at the prison law library and

passing "tier notes."[5] They were planning to stage mock fights between rival members of the Crips and Bloods gangs in order to lure peace officers to several "vunerable locations." Upon arriving at those locations, the officers would be stabbed in areas not protected by their vests (the face, neck, groin).

On January 24, 2005, authorities found an inmate-manufactured stabbing weapon in the cell of a conspirator. Prison authorities received confidential information that similar weapons had been distributed to other conspirators. This information was corroborated by more than one independent source, including a source who "passed a CVSA that further establishes that the information provided is true."[6]

As punishment for the May 2005 conspiracy violation, appellant forfeited 180 days of credit. Appellant was advised of his appellate rights, but did not seek further review of the conspiracy violation.

Appellant's Arguments. Appellant argued that he was suitable for resentencing because of his low actuarial risk of recidivism. He received the best possible score of "low" on the California Static Risk Assessment (CSRA), which is based on demographic information such as age, gender, and criminal history. The robberies he committed as an adult in 1993 arose from a single offense. Like the 1993 robbery convictions, the present burglary offense, committed in March 1997, is remote and involved no injuries to the victims. Moreover, the present

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[5] A "tier note" or "kite" is a "clandestine communication between two inmates." (*People v. Bryden* (1998) 63 Cal.App.4th 159, 169.)

[6] "CVSA" refers to computer voice stress analysis.

burglary offense would constitute a misdemeanor under current law because the dollar amount was less than $950 and appellant has no disqualifying prior convictions.

Appellant argued he had a strong record of rehabilitation. He successfully completed educational and vocational training programs in July 2008 and May 2009, a self-improvement program in September 2013, and an Alcoholics Anonymous program in March 2013. In 2010, appellant was employed as a porter, which involved providing physical assistance to disabled inmates. In 2011, his peers elected him to the position of vice-chairman of the inmate advisory council.

Throughout his incarceration, appellant has maintained stable relationships with friends and family members. His aunt will provide him with a place to stay upon his release. In addition, his uncle will provide him with vocational training in engineering.

As to the prison riot violations, appellant argued they are not serious violations. He claimed that like many inmates, he was an unwilling participant who was forced to defend himself during the riots. Moreover, he was never the aggressor in any of the riots.

Regarding the March 2005 violation for threatening staff, appellant argued he did not threaten anyone. He merely expressed his "frustrations and ideological viewpoints" in letters to a third party.

Appellant argued the conspiracy allegations of May 2005 were unsupported by the evidence and were demonstrably false. No weapons were found in his possession and there were no written communications between appellant and any co-conspirators. There was nothing to link him to the conspiracy

other than the unspecified confidential information from undisclosed and unreliable informants. The fact that he was not criminally prosecuted and received only a "relatively minor" penalty (a 180-day forfeiture of credits) indicates the "disciplinary proceeding was never intended as a legal adjudication–or anything close to it."

Trial Court Ruling. After reviewing the record and considering the arguments by the parties, the trial court issued a detailed statement of decision. In appellant's favor, the court found he had sustained only two convictions as an adult (both stemming from one incident) before committing the present offense in 1998. However, the court was troubled by appellant's failure to remain free from custody or parole supervision since he was a juvenile. The court found that "while Petitioner's criminal history is not extensive, it is clear from the record that Petitioner was unable to function as a law-abiding citizen even while under parole supervision; furthermore, four years of incarceration as a juvenile and two-and-a-half years in prison as an adult failed to dissuade him from committing the instant offense."

Even though appellant's criminal convictions were remote, his history was nevertheless probative in light of his disciplinary reports, continued gang membership, lack of rehabilitation, and inadequate post-release plan. Setting aside the less serious violations for rioting, mutual combat, and manufacturing alcohol, the court found the violations for threatening staff and conspiring to murder peace officers to be serious indications that appellant poses a current threat of danger to public safety.

In the trial court's view, the 2005 letters demonstrated a violent and criminal mindset toward law enforcement. When appellant stated "it's now time for black's [sic] to get busy and

give these crackers the only thing they understand and that's violence," he was contemplating attacking correctional officers. Viewed together, appellant's statements in his letters—that he was angry at some blacks for engaging in non-violent protests—and at the disciplinary hearing—that he was mad at the blacks in the building based on their conduct—showed that he favored violent retaliatory action over non-violent protests.

The conspiracy as described in the 2005 Rules Violation Report was detailed and specific. The court stated: "Petitioner and his co-conspirators decided they would lure peace officers into specific areas of the prison where they would be most vulnerable. The conspirators would stage a mock fight to create a distraction, which would also generate a response code within the prison facility. This would allow Petitioner and his co-conspirators to fatally attack not only the pre-identified officers they lured into vulnerable locations, but also the staff who would arrive from other facilities as a result of the response code. Petitioner and his co-conspirators also formulated a plan to circumvent the peace officers' protective gear by stabbing them in the face, neck, and groin. Furthermore, one of the conspirators had already begun distributing weapons to the inmates who agreed to participate in the fatal attack, which clearly establishes that the plan had moved far past the contemplation stage. In other words, Petitioner and his co-conspirators were already beginning to execute their plan to fatally attack numerous correctional officers."

The court found the conspiracy violation particularly probative as to whether resentencing appellant would pose an unreasonable risk of danger to public safety. The court reasoned that "[c]onspiracy to commit murder (§ 182) is a super strike

within the meaning of § 1170.18(c) because the punishment is either death or life imprisonment. According to section 18[2](a)(6) of the Penal Code, when two or more persons conspire to commit murder, the punishment 'shall be that prescribed for murder in the first degree.' First degree murder carries a sentence of either death, life without the possibility of parole, or 25 years to life, thus rendering it a violent felony pursuant to [section] 667(e)(2)(C)(iv)(VIII). By conspiring to murder peace officers in 2005, Petitioner has already committed an act that qualifies as a super strike; as such, his disciplinary record indicates that he poses an unreasonable risk of danger to public safety within the meaning of [section] 1170.18(c)."

The court also was troubled by the fact that appellant had maintained his ties with the Rolling 20's Bloods, a violent criminal street gang. Citing *People v. Carr* (2010) 190 Cal.App.4th 475, 480, the court noted that the primary activities of this gang are robberies, narcotics sales, assaults, and murders. As a result of the nexus between appellant's gang affiliation and participation in the conspiracy to murder peace officers, the court found his continued affiliation with the Bloods demonstrated there was an unreasonable risk he would commit a future violent felony within the meaning of section 1170.18, subdivision (c).

As to his post-release plans, the court found it was not sufficient to have plans for housing and training without an actual job offer or re-entry group to assist him. Even though statistics indicate that at his current age of 53, appellant no longer presents an unreasonable risk of danger to society, "these statistics are contradicted by Petitioner's continued gang association and the fact that he conspired to murder peace officers at the age of 43."

The court was not persuaded by the low CSRA score, which does not take into account appellant's record of prison misconduct. The court found that appellant's serious and dangerous behavior while in prison weighed heavily against his resentencing request. Based on the totality of the evidence, the court concluded "that resentencing Petitioner would pose an unreasonable risk of danger to public safety pursuant to the definition set forth in section 1170.18, subdivision (c) due to his disciplinary record, gang membership, insufficient record of rehabilitation while incarcerated, and inadequate post-release plans." Appellant filed a timely appeal from the order of denial.[7]

DISCUSSION

I

Subdivision (b) of section 1170.18 provides in relevant part that "[u]pon receiving a petition under subdivision (a), the court shall determine whether the petitioner satisfies the criteria in subdivision (a). If the petitioner satisfies the criteria in subdivision (a), the petitioner's felony sentence shall be recalled and the petitioner resentenced to a misdemeanor pursuant to . . . Section 459.5 . . . of the Penal Code, as those sections have been amended or added by this act, unless the court in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety."

"In exercising its discretion, the court may consider all of the following: [¶] (1) The petitioner's criminal conviction history, including the type of crimes committed, the extent of injury to

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[7] The trial court did not expressly rule on the petition for relief under Proposition 36, and appellant does not raise any issues regarding Proposition 36 on appeal.

victims, the length of prior prison commitments, and the remoteness of the crimes. [¶] (2) The petitioner's disciplinary record and record of rehabilitation while incarcerated. [¶] (3) Any other evidence the court, within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety." (§ 1170.18, subd. (b).)

For purposes of Proposition 47, the determination by the trial court as to whether the petitioner poses an "unreasonable risk of danger to public safety" is to be made under a preponderance of the evidence standard. (*People v. Jefferson*, *supra*, 1 Cal.App.5th at pp. 240–241.) We apply the abuse of discretion standard in reviewing that determination on appeal. (*Id.* at pp. 242–243.)

II

Appellant contends the trial court erred by relying on the findings contained in the May 2005 Rules Violation Report for conspiracy to murder correctional officers without having personally examined the sealed statements by confidential informants.[8] Appellant contends that until the trial court independently reviews the sealed statements, its reliance upon the May 2005 Rules Violation Report is not justified, and the evidence is insufficient to support a finding of dangerousness.

Section 1170.18 does not support this contention. By its plain language, subdivision (b) allows the consideration of a petitioner's disciplinary record, which necessarily includes the May 2005 Rules Violation Report. Such reports are admissible at

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[8] The trial court granted the motion by the Department of Corrections to quash respondent's subpoena for the confidential records pertaining to the conspiracy allegation.

a Proposition 47 hearing. "Nothing in Proposition 47 suggests the applicable rules of evidence are any different than those which apply to other types of sentencing proceedings. Accordingly, limited use of hearsay such as that found in probation reports is permitted, provided there is a substantial basis for believing the hearsay information is reliable. (*People v. Arbuckle* (1978) 22 Cal.3d 749, 754 (*Arbuckle*); *People v. Lamb* (1999) 76 Cal.App.4th 664, 683, (*Lamb*); see also § 1170, subd. (b) [sentencing court can consider probation report].)" (*People v. Sledge* (2017) 7 Cal.App.5th 1089, 1095.)

III

Appellant contends that reliance on the May 2005 Rules Violation Report, without reviewing the sealed confidential information upon which the report was based, violated his rights to due process and equal protection under the California Constitution and the Fourteenth Amendment. We do not agree.

As a result of the May 2005 Rules Violation Report, appellant suffered a forfeiture of credits (it is not clear whether these were custody or conduct credits). Although appellant has a due process interest in assuring that his conduct credits are not arbitrarily forfeited, "[t]he requirements of due process are flexible and depend on a balancing of the interests affected by the relevant government action. *E.g.*, *Cafeteria Workers v. McElroy*, 367 U.S. 886, 895 (1961)." (*Superintendent v. Hill* (1985) 472 U.S. 445, 454 (*Hill*).)

Appellant's due process interest must be balanced against the fact that prison "disciplinary proceedings 'take place in a closed, tightly controlled environment peopled by those who have chosen to violate the criminal law and who have been lawfully incarcerated for doing so.' [Citation.] Consequently, in

identifying the safeguards required by due process, the Court has recognized the legitimate institutional needs of assuring the safety of inmates and prisoners, avoiding burdensome administrative requirements that might be susceptible to manipulation, and preserving the disciplinary process as a means of rehabilitation. See, e.g., *Ponte v. Real*, 471 U.S. 491 (1985); *Baxter v. Palmigiano*, 425 U.S. 308, 321–322 (1976); *Wolff v. McDonnell* . . . 418 U.S. [539], 562–563 [(1974) (*Wolff*)]." (*Hill*, *supra*, 472 U.S. at pp. 454–455.)

As the Supreme Court explained in *Hill*, "[r]equiring a modicum of evidence to support a decision to revoke good time credits will help to prevent arbitrary deprivations without threatening institutional interests or imposing undue administrative burdens. In a variety of contexts, the Court has recognized that a governmental decision resulting in the loss of an important liberty interest violates due process if the decision is not supported by any evidence. See, *e. g.*, *Douglas v. Buder*, 412 U.S. 430, 432 (1973) (*per curiam*) (revocation of probation); *Schware v. Board of Bar Examiners*, 353 U.S. 232, 239 (1957) (denial of admission to bar); *United States ex rel. Vajtauer v. Commissioner of Immigration,* 273 U.S. 103, 106 (1927) (deportation). Because the written statement mandated by *Wolff* requires a disciplinary board to explain the evidence relied upon, recognizing that due process requires some evidentiary basis for a decision to revoke good time credits will not impose significant new burdens on proceedings within the prison. Nor does it imply that a disciplinary board's factual findings or decisions with respect to appropriate punishment are subject to second-guessing upon review." (*Hill*, *supra*, 472 U.S. at p. 455.)

In light of the unique and difficult environment in which prison disciplinary hearings are conducted, "the requirements of due process are satisfied if some evidence supports the decision by the prison disciplinary board to revoke good time credits. This standard is met if 'there was some evidence from which the conclusion of the administrative tribunal could be deduced . . . .' *United States ex rel. Vajtauer v. Commissioner of Immigration*, 273 U.S., at 106. Ascertaining whether this standard is satisfied does not require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of the evidence. Instead, the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board. See *ibid.*; *United States ex rel. Tisi v. Tod*, 264 U.S. 131, 133–134 (1924); *Willis v. Ciccone*, 506 F.2d 1011, 1018 (CA8 1974). We decline to adopt a more stringent evidentiary standard as a constitutional requirement. Prison disciplinary proceedings take place in a highly charged atmosphere, and prison administrators must often act swiftly on the basis of evidence that might be insufficient in less exigent circumstances. See *Wolff*, 418 U.S., at 562–563, 567–569. The fundamental fairness guaranteed by the Due Process Clause does not require courts to set aside decisions of prison administrators that have some basis in fact. Revocation of good time credits is not comparable to a criminal conviction, *id.*, at 556, and neither the amount of evidence necessary to support such a conviction, see *Jackson v. Virginia*, 443 U.S. 307 (1979), nor any other standard greater than some evidence applies in this context." (*Hill*, *supra*, 472 U.S. at p. 455–456; see *In re Johnson* (2009) 176 Cal.App.4th 290, 297 [same].)

"[C]ourts must grant great deference to a prison's decision to impose discipline against an inmate. (*In re Rothwell* [(2008)] 164 Cal.App.4th [160,] 167.) It is only when prison officials act to deprive an inmate of life, liberty, or property in a manner that falls outside the expected parameters of the sentence imposed that the Fourteenth Amendment due process clause is invoked. (*Sandin v. Conner* [(1995)] 515 U.S. [472,] 485; *In re Estrada* (1996) 47 Cal.App.4th 1688, 1699.)" (*In re Johnson*, *supra*, 176 Cal.App.4th at p. 297.) "As the court stated in *Hill*, there is no requirement that the evidence presented to the prison official 'logically preclude . . . any conclusion but the one reached by the disciplinary [official].' (*Hill, supra,* 472 U.S. at p. 457.)" (*In re Johnson*, at p. 300.)

Although a prisoner has a due process right in the adherence to procedural and administrative rules when an internal disciplinary proceeding involves the revocation of statutory conduct credits, there is no constitutional right to conduct credits. (*In re Johnson*, *supra*, 176 Cal.App.4th at p. 297.) To the extent a disciplinary proceeding results in the denial of conduct credits, it is subject to judicial review (*ibid.*), but the record shows that appellant did not avail himself of that right.

On this record, we are satisfied that the disciplinary findings were supported by sufficient evidence to justify the revocation of good time custody credits. (See *Hill*, *supra*, 472 U.S. at p. 456; see *In re Johnson*, *supra*, 176 Cal.App.4th at p. 297.) Appellant has not established a violation of due process or equal protection.

IV

Appellant argues the trial court's reliance on prison disciplinary reports without consideration of the underlying confidential information upon which they are based violated the separation of powers doctrine of the California Constitution.[9] Because the issue was not raised below, it was forfeited. (See *People v. Fuiava* (2012) 53 Cal.4th 622, 652 [failure to raise constitutional claim at trial resulted in forfeiture on appeal].) Nevertheless, we will discuss the claim in light of the alternative contention of ineffective assistance of counsel.

The separation of powers contention is not entirely clear. After acknowledging the general admissibility of prison disciplinary reports, the opening brief raises what appears to be a claim of insufficiency of the evidence: that the trial court lacked sufficient information regarding appellant's role in the conspiracy and the reliability of confidential informants to properly exercise discretion under section 1170.18.

As appellant acknowledges, prison disciplinary reports are generally admissible at Proposition 47 hearings and a trial court "will *not* violate the separation of powers every time it relies upon a rules violation report. As long as the report discloses enough of the underlying facts to allow the trial court to exercise its own independent judgment in finding the necessary facts, the California Constitution does not bar the court from relying on the report." (Italics added.) As we have discussed, the degree of

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[9] Article III, section 3 of the California Constitution states: "The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution."

proof required to support a disciplinary finding is low, and there was no error in the trial court's reliance upon the reports. Accordingly, we reject the separation of powers claim.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EPSTEIN, P. J.

We concur:

WILLHITE, J.

COLLINS, J.